U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES W. HARRISON and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 01-471; Submitted on the Record;
Issued April 4, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than an 18 percent permanent impairment of the right upper extremity, for which he received a schedule award.

On November 29, 1999 appellant, then a 52-year-old machinist, injured his right arm while in the performance of his duties when he turned a wrench and fell. The Office of Workers' Compensation Programs accepted his claim for tendinitis of the right forearm and bursitis of the right shoulder. Appellant received compensation benefits.

The Office authorized surgical intervention and on October 17, 1991 appellant underwent an acromioplasty of the right shoulder involving a resection of the inferior distal clavicle.

On November 24, 1997 appellant filed a claim for a schedule award. To support his claim, he submitted the October 15, 1997 report of Dr. David Weiss, a Board-certified orthopedist and Fellow of the American Academy of Disability Evaluating Physicians. Dr. Weiss related appellant's history and complaints. Findings on physical examination included forward elevation of 160/180 degrees, abduction of 140/180 degrees, "cross over/adduction" of 70/75 degrees and external rotation of 90/90 degrees. Posterior reach (internal rotation) was to T10 on the right compared to T6 on the left. Circumduction presented with marked acromioclavicular crepitance. Hawkins impingement sign was still mildly positive. Isolated motor strength testing of the right deltoid was 4+/5. Appellant noted intermittent right shoulder pain and stiffness exacerbated by weather changes. He also noted weakness in the right arm and restrictions in his activities of daily living.

Dr. Weiss assigned an impairment rating of 9 percent for motor strength deficit of the right deltoid, according to Table 12, page 49 and Table 15, page 54, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1995). He assigned a 24 percent impairment for right shoulder resection acromioplasty, according to Table 27, page 61. He also assigned a 5 percent impairment for right acromioclavicular crepitance,

according to Table 17, page 58 and Table 19, page 59. Dr. Weiss concluded that appellant had a 34 percent combined impairment of the right upper extremity.

On June 18, 1998 an Office medical adviser reviewed the findings reported by Dr. Weiss. The Office medical adviser followed the grading scheme and procedure for determining impairment due to loss of power and motor deficits[1] and agreed with the impairment rating of nine percent for motor impairment of the deltoid muscle. For impairment due to arthroplasty, however, the medical adviser noted that appellant had a resection of the acromioclavicular joint, which under Table 27, page 61, represents a 10 percent impairment of the upper extremity. He explained that the 24 percent rating used by Dr. Weiss was meant for resection of the glenohumeral joint. The medical adviser also noted that an impairment rating for crepitation was permissible so long as it avoided duplication of an award. Because there was a diagnosis-based award for appellant's arthroplasty, the medical adviser reported that an additional award for crepitation was not allowed in this case. The medical adviser concluded that appellant had an 18 percent combined impairment of the right upper extremity.

On August 14, 1998 the Office issued a schedule award for an 18 percent permanent impairment of the right upper extremity.

In a decision dated July 26, 2000, an Office hearing representative affirmed the August 14, 1998 award. The hearing representative found that the weight of the medical evidence rested with the opinion of the Office medical adviser, whose impairment rating more fully conformed with the A.M.A., *Guides* than did the rating provided by Dr. Weiss.

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or permanent impairment of specified members, organs or functions of the body. The Office evaluates the degree of impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[3]

On October 17, 1991 appellant underwent an acromioplasty of the right shoulder involving a resection of the inferior distal clavicle. According to Table 27, page 61, of the A.M.A., *Guides*, a resection arthroplasty at the level of the distal clavicle (isolated) represents a 10 percent impairment of the upper extremity. This appears more appropriate under the facts of this case than the 24 percent rating given by Dr. Weiss for a "total shoulder" arthroplasty.

On the issue of crepitation, the Office medical adviser indicated that the diagnosis-based estimate for arthroplasty precludes an impairment for crepitation, which would duplicate or overstate the actual degree of impairment. The A.M.A., *Guides* gives no direct guidance in this matter. Clearly, however, impairments derived from Table 27, page 61, are not incompatible

[1] Table 12, page 49.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

with or mutually exclusive of all other impairments. The Office medical adviser himself allowed both an impairment for arthroplasty and an impairment for loss of power and motor deficits.[4] Although it was not done in this case, the section on arthroplasty expressly permits combining the diagnosis-based arthroplasty impairment with separately derived motion impairments.[5] And for impairments of the lower extremities, at least, the A.M.A., *Guides* allows diagnosis-based estimates to be combined with ratings for degenerative changes.[6]

It is not at all clear, therefore, whether joint crepitation is an expected residual that is included in the diagnosis-based estimate for arthroplasty or whether it is a different impairment that should be combined with the diagnosis-based estimate.

The Office procedure manual lists the tables in the fourth edition of the A.M.A., *Guides* that will result in duplicative measurements and artificially high percentage impairments. The Office procedure manual provides that Table 19, page 59, impairment from joint crepitation, is incompatible with tables estimating upper extremity impairments due to lack of motion, due to synovial hypertrophy and due to carpal instability patterns. Table 27, page 61, impairment of the upper extremity after arthroplasty of specific bones or joints, appears nowhere in this listing.

Because the diagnosis-based estimate for arthroplasty does not appear incompatible with all other impairments and because the Office procedure manual does not list Table 27, page 61, as being incompatible with Table 19, page 59, the Office medical adviser should clarify whether the diagnosis-based estimate for arthroplasty precludes an impairment for crepitation.

A question also arises whether estimates for arthroplasty or crepitance should be used at all in this case. The A.M.A., *Guides* emphasizes that impairments for such disorders of the upper extremity are usually estimated by using other criteria. The A.M.A., *Guides* cautions: "*The criteria described in this section* [impairments due to other disorders of the upper extremity] *should be used only when the other criteria have not adequately encompassed the extent of the impairments*."[7] (Emphasis added.)

Although both Dr. Weiss and the Office medical adviser estimated an impairment due to arthroplasty, neither established that the criteria usually used for estimating impairment -- those based on such clinical findings as loss of motion, pain and loss of strength -- do not adequately encompass the extent of appellant's impairment.

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[4] *Contra* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (October 1995) (when a table based on a specific diagnosis is used, no additional increment for pain or loss of strength should be included in the determination of impairment).

[5] Range of motion findings by Dr. Weiss reveal a 2 percent impairment due to lack of flexion, using Figure 38, page 43 and a 2 percent impairment due to lack of abduction, using Figure 41, page 44. His findings for cross over/adduction and for posterior reach (internal rotation) do not allow comparison to the criteria of the A.M.A., *Guides*.

[6] A.M.A., *Guides* 84, 82 (fractures in and about joints with degenerative changes).

[7] *Id*. at 58.

The Board will set aside the Office's July 26, 2000 decision and remand the case for further development to clarify the appropriateness of using the diagnosis-based estimate for arthroplasty and to clarify the compatibility of estimates for arthroplasty and crepitance. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

The July 26, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
April 4, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member